

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MARK WARREN PEARY, individually and in
his capacity as executor of the Estate of Joseph
Shuster,

Plaintiff,

vs.

DC COMICS, INC., et al.,

Defendants.

Civil Action No. 1:25-cv-00910-JMF

**DECLARATION OF MARC TOBEROFF
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS OR TRANSFER**

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*Attorneys for Plaintiff, Mark Warren Peary,
individually and as executor of the Estate of
Joseph Shuster*

March 21, 2025

DECLARATION

I, Marc Toberoff, declare as follows:

1. I am a member of the bar of the State of New York and a principal of the law firm Toberoff & Associates, P.C., counsel of record for Plaintiff Mark Warren Peary (“Plaintiff”). I submit this Declaration in Support of Plaintiff’s Opposition to Defendants’ Motion to Dismiss or Transfer. Except where otherwise stated, I have personal knowledge of the facts set forth herein and, if called as a witness, could and would so testify.

2. I was born and raised in New York City and graduated from Columbia Law School. I have maintained an apartment in New York on East 63rd Street for many years.

3. It has been my expectation that, in connection with any trial or in-person appearances required in this matter, I would be able to accommodate Plaintiff in the guestroom of that apartment.

4. Similar arrangements would not be possible in Los Angeles, where I live with my wife and children, whom—as any husband knows—it would not be wise to impose upon.

5. Attached hereto as **Exhibit 1** is a true and correct copy of the judgment in *Dramatico Entertainment Ltd & Ors v British Sky Broadcasting Ltd & Ors* [2012] EWHC 268 (Ch), decided on February 20, 2012, in the High Court of Justice, Chancery Division, the Honourable Mr. Justice Arnold presiding.

6. Attached hereto as **Exhibit 2** is a true and correct copy of the judgment in *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers* [2004] 2 SCR 427, decided on June 30, 2004, in the Supreme Court of Canada, Chief Justice McLachlin and Justices Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel, Deschamps, and Fish present.

7. Attached hereto as **Exhibit 3** is a true and correct copy of the judgment in *Telstra Corporation Ltd v Australasian Performing Right Association Ltd* [1997] HCA 41, decided on August 14, 1997, in the High Court of Australia, Justices Dawson, Toohey, Gaudron, McHugh,

and Kirby presiding.

8. Attached hereto as **Exhibit 4** is a true and correct copy of the judgment in *Stichting Brein v Ziggo BV and XS4All Internet BV*. [2017] EUECJ C-610/15, decided on June 14, 2017, in the Court of Justice of the European Union (Second Chamber), President Ilešič and Judges Prechal, Rosas, Toader, and Jarašiūnas presiding.

9. Attached hereto as **Exhibit 5** is a true and correct copy of the transcript of proceedings for the hearing on plaintiff DC Comics' motion for partial summary judgment in *DC Comics v. Pacific Pictures Corp. et al*, Case No. 10-CV-3633 (ODW) (RZx) (C.D. Cal. 2010), held on September 5, 2012, in the United States District Court for the Central District of California, before Judge Otis D. Wright.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on March 21, 2025.

/s/ Marc Toberoff
Marc Toberoff